

Present : Jayewardene A.J.

1923.

POOSARI v. PERERA.

224—P. C. Nuwara Eliya, 6,238.

Thoroughfares Ordinance, 1861—Removal of cattle from possession of licensed cattle seizer—License signed, not by Chairman, but by some other person “for Chairman”—Licence invalid.

Accused was charged under section 94 of the Thoroughfares Ordinance, 1861, with having removed a cow from the lawful custody of a licensed cattle seizer. The licence was signed by Mr. S. for the Chairman of the Board of Improvement, Nuwara Eliya.

Held, that licence was invalid, and that accused had, therefore, not committed an offence.

Licenses of this kind must be signed by the Chairman himself. for their issue is not a ministerial matter, but his discretion has to be exercised in the choice of suitable persons as cattle seizers.

THE facts appear from the judgment.

Peri Sunderam, for the appellant.

May 15, 1923. JAYEWARDENE A.J.—

In this case the accused has been charged with a breach of subsection (2) of section 94 of Ordinance No. 10 of 1861, called the Thoroughfares Ordinance. He is said to have removed a brown and white cow from the lawful custody of the Board of Improvement's

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licensed cattle seizer, Poosari. Ordinance No. 5 of 1915, which amended section 94 (2) of the Thoroughfares Ordinance, has made it an offence to remove any animal from the custody of a licensed cattle seizer, or to molest or obstruct him in the performance of his duties. The learned Magistrate convicted the accused and imposed a fine of Rs. 25. The appeal must, therefore, be based on a question of law. Several points of law have been taken on behalf of the appellant, but I will only deal with one of them, which appears to me to be fatal to the conviction. It is necessary for the prosecution to prove, in cases of this kind, that the cattle seizer is lawfully authorized or licensed to seize cattle. The lawful authority under section 94 has to be issued by the Chairman of the Provincial or District Committee, who is generally the Government Agent of a Province or the Assistant Government Agent of a District. But the license issued in this case to the seizer is signed by one Mr. Sudbury, for Chairman, Board of Improvement, Nuwara Eliya. Licenses of this kind must, in my opinion, be signed by the Chairman himself, for their issue is not a ministerial matter, but his discretion has to be exercised in the choice of suitable persons as cattle seizers. The license under which the accused's head of cattle was seized was, therefore, invalid in law, and Poosari had no lawful authority to seize the accused's head of cattle. On this short ground I allow the appeal, and set aside the conviction.

Set aside.